

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM G. TOMKO, JR. *trading and doing business as* MISSIONARY PARTNERS, LTD.,

Plaintiffs,

v.

BALDWIN BOROUGH, ROBERT FIREK and JASON STANTON,

Defendants.

Civil Action No. 2:20-cv-822

Hon. William S. Stickman IV
Hon. Patricia L. Dodge

ORDER OF COURT

William G. Tomko, Jr. (“Tomko”) individually and on behalf of Missionary Partners, Ltd. (“Missionary Partners”) as its general partner, filed a Complaint in June of 2020 against Defendant Baldwin Borough, Robert Firek (“Firek”), and Jason Stanton (“Stanton”) (collectively, “Defendants”) that asserted claims stemming from what can very generally be described as a land use dispute. (ECF No. 1). Tomko subsequently amended the Complaint in September 2020. (ECF No. 10). After Defendants moved to dismiss the Amended Complaint (ECF No. 12), Magistrate Judge Patricia L. Dodge issued a Report and Recommendation (ECF No. 27) that Defendants’ motion be granted with respect to all counts. Tomko filed Objections to Magistrate Judge Dodge’s report. (ECF No. 28). The Court adopted Magistrate Judge Dodge’s recommendations, but it permitted Tomko to replead some claims. (ECF No. 30).

Tomko then filed a Second Amended Complaint, which alleges claims of substantive due process against Defendants (Count I), conspiracy against Robert Firek and Jason Stanton (Count II), and breach of contract against Baldwin Borough (Count III). (ECF No. 31). Defendants

moved to dismiss the Second Amended Complaint. (ECF No. 32). After briefing concluded, Magistrate Judge Dodge issued a Report and Recommendation, recommending to the Court that Defendants' motion be granted with prejudice as to Counts I and II, and that Count III be dismissed without prejudice under 28 U.S.C. § 1367(c)(3). (ECF No. 37). Tomko filed Objections to Magistrate Judge Dodge's Report and Recommendation (ECF No. 38), and Defendants filed a Reply (ECF No. 39).

After its independent *de novo* review of the record and consideration of the pleadings of the parties, the Court hereby ADOPTS Magistrate Judge Dodge's Report and Recommendation (ECF No. 37) as its Opinion. It agrees with her comprehensive legal analysis and conclusions. The Court hereby OVERRULES Tomko's Objections (ECF No. 38).

AND NOW, this 13th day of August 2021, is its HEREBY ORDERED that Defendants' Motion to Dismiss for Failure to State a Claim (ECF No. 32) is GRANTED. Counts I and II are DISMISSED WITH PREJUDICE. The Court holds that further amendment would be futile.¹ Count III is DISMISSED WITHOUT PREJUDICE under 28 U.S.C. § 1367(c)(7). The Clerk of Court is directed to mark this CASE CLOSED.

BY THE COURT:

s/ William S. Stickman IV
WILLIAM S. STICKMAN IV
UNITED STATES DISTRICT JUDGE

¹ "An amendment is futile if it merely restates the same facts as the original complaint in different terms, reasserts a claim on which the court previously ruled, fails to state a legal theory, or could not withstand a motion to dismiss." 3 James Wm. Moore *et al.*, *Moore's Federal Practice* ¶ 15.15 (3d ed. 2021).